

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
 2 NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel. W.A. )  
 4 DREW EDMONDSON, in his capacity as )  
 5 ATTORNEY GENERAL OF THE STATE OF )  
 6 OKLAHOMA and OKLAHOMA SECRETARY OF )  
 7 THE ENVIRONMENT C. MILES TROBERT, )  
 8 in his capacity as the TRUSTEE FOR )  
 9 NATURAL RESOURCES FOR THE STATE OF )  
 10 OKLAHOMA, )  
 11 )  
 12 Plaintiff, )  
 13 )  
 14 -vs- ) Case No.  
 15 ) 05-CV-329-GKF-PJC  
 16 )  
 17 TYSON FOODS, INC., TYSON POULTRY, )  
 18 INC., TYSON CHICKEN, INC., COBB- )  
 19 VANTRESS, INC., AVIAGEN, INC., CAL- )  
 20 MAINE FOODS, INC., CAL-MAINE FARMS, )  
 21 INC., CARGILL, INC., CARGILL TURKEY )  
 22 PRODUCTION, LLC, GEORGE'S, INC., )  
 23 GEORGE'S FARMS, INC., PETERSON )  
 24 FARMS, INC., SIMMONS FOODS, INC., )  
 25 and WILLOW BROOK FOODS, INC., )  
 Defendants. )

16 TRANSCRIPT OF PROCEEDINGS,

17 held before the Honorable Paul J. Cleary, Magistrate

18 Judge in the United States District Court for the

19 Northern District of Oklahoma on March 2, 2009.

20 A P P E A R A N C E S

21 For the Plaintiff: Mr. Louis Bullock  
 22 Ms. Claire Xidis and  
 23 Ms. Kelly Burch  
 Attorneys at Law

24 For the Defendant Cargill: Mr. John Tucker  
 Attorney at Law

25 (Appearances continued . . .)

1 (Appearances continued . . .)

2 For the Defendant Peterson: Mr. Philip Hixon and  
3 Mr. Scott McDaniel  
Attorneys at Law

4 For the Defendant Tyson: Mr. Robert George  
Attorney at Law

5 For the Defendant Cal-Maine: Mr. Robert Redemann and  
6 Mr. Robert Sanders  
Attorneys at Law

7 For Simmons Foods: Ms. Vicki Bronson  
8 Attorney at Law

9 For George's: Mr. James Graves  
10 Attorney at Law

11 P R O C E E D I N G S

12 COURTROOM DEPUTY: Case Number

13 05-CV-329-GKF-PJC, Attorney General of the State of  
14 Oklahoma, versus Tyson Foods, et al. Counsel, please  
15 state your appearances for the record.

16 MS. XIDIS: Your Honor, Claire Xidis on behalf  
17 of the state.

18 MR. BULLOCK: Louis Bullock for the State of  
19 Oklahoma.

20 MS. BURCH: Kelly Burch, State of Oklahoma.

21 MR. TUCKER: John Tucker for the Tyson  
22 defendants -- I mean, for the Cargill defendants. I'm  
23 sorry, Your Honor. I get confused.

24 THE COURT: You're Cargill?

25 MR. TUCKER: Cargill, yes.

1 THE COURT: All right.

2 MR. GEORGE: Good morning, Your Honor. Robert  
3 George. I do represent the Tyson defendants.

4 MR. GRAVES: James Graves for George's Farms.

5 MS. BRONSON: Vicki Bronson for Simmons  
6 defendants.

7 MR. McDANIEL: Scott McDaniel for Peterson  
8 Farms.

9 MR. HIXON: Philip Hixon for Peterson Farms.

10 MR. REDEMANN: Robert Redemann for Cal-Maine.

11 MR. SANDERS: Bob Sanders for the Cal-Maine  
12 defendants.

13 THE COURT: All right. Let's see. Mr.  
14 Bullock, last time I raised the issue that -- attorney  
15 fees motion and I know you were going to mull it over.  
16 Have you had an opportunity to do so?

17 MR. BULLOCK: I took a look at that, Judge.  
18 I'd like to have a chance to have a conference with the  
19 defendants. But in looking at it, I have some confidence  
20 that we should be able to resolve our differences.

21 THE COURT: We'll probably hold off then  
22 setting that for any kind of a hearing and maybe within a  
23 few weeks if you can talk to them and see if that can be  
24 worked out, then we won't need to belabor everybody with  
25 a hearing on that.

1                   We have a number of motions and then -- motions  
2           to compel and motions for protective order all basically  
3           relating to the same issues. And have you folks  
4           considered or discussed how to address those topics? And  
5           I guess I'm particularly interested in whether the status  
6           right now with respect to each of these -- the defendants  
7           at issue here, Cargill, George's, Simmons and Peterson,  
8           whether they're all similarly situated at least in the  
9           sense of what you have produced to the plaintiffs in this  
10          case or are there variations in that regard that need to  
11          be addressed. Ms. Xidis, you look like you --  
12          (Interrupted)

13                   MS. XIDIS: Yes, Your Honor. I'm going to  
14          address each of those four motions for the state and to  
15          go to the common issues and then to point out the factual  
16          circumstances that vary between the defendants.

17                   THE COURT: Okay.

18                   MS. XIDIS: Prepared to address those --  
19          (Interrupted)

20                   THE COURT: All right. And then we'll  
21          obviously give the defendants their opportunity to  
22          respond. And those of you that have also filed motions  
23          for protective order, I think the arguments are going to  
24          be the same. So we'll roll all that up in your response.  
25          Do you want to start, Ms. Xidis?

1 MS. XIDIS: Yes, Your Honor. Your Honor,  
2 Claire Xidis from Motely Rice on behalf of the state.  
3 What we have pending before us are the four motions which  
4 address the state's motion to compel for Cargill,  
5 George's, Simmons and Peterson. As I mentioned, I think  
6 the most efficient way to address it is to discuss the  
7 common issues and then follow up on the individual  
8 circumstances of each production.

9 Across the board today, Your Honor, the state  
10 is seeking two types of financial information from these  
11 defendants. Specifically, that's financial statements  
12 and tax returns for the last two years. When I say  
13 financial statements, Your Honor, what I mean is the  
14 three part financial statement which is the Standard and  
15 Generally Accepted Accounting Practices which is -- the  
16 first part is a balance sheet, the second part is an  
17 income statement, and the third part is a cash flow  
18 statement. We would be seeking those, including  
19 accountants' or auditors' notes which explain -- flesh  
20 out the meanings of the numbers that are set forth in  
21 those financial statements.

22 First, Your Honor, I'd like to address  
23 financial statements. The defendants have produced in  
24 varying states different types of balance sheets. And,  
25 Your Honor, the reason the state does not believe that

1 balance sheets standing alone present a full picture of  
2 financial condition -- which is the relevant issue we're  
3 looking at here. I don't think there's disagreement  
4 among the parties that a financial condition is the  
5 relevant issue for the punitive damage -- scope of that.

6 A balance sheet standing alone only presents a  
7 very limited snapshot picture of -- on the assets and the  
8 liabilities of the company at a specific point in time.  
9 It essentially presents the value of that company if its  
10 doors were to be closed and those assets and liabilities  
11 were to be liquidated, what would be that value. That's  
12 what we see when we look at a balance sheet. So  
13 essentially, it's very quantitative information but not  
14 very qualitative information about those assets and  
15 liabilities and about the overall health and financial  
16 condition of a company.

17 The notes to a balance sheet are very important  
18 for a couple of reasons. Those notes explain what  
19 accounting practices and methods were used to create that  
20 balance sheet. They also explain inter-company debts, if  
21 there's a parent company and subsidiary companies,  
22 whether those are treated as arms-length transactions or  
23 are treated differently because that impacts the  
24 company's bottom line. The notes also explain the terms  
25 and condition of the debts and assets with is important

1       when looking again at those bottom line numbers. So,  
2       Your Honor, that's why balance sheets plus notes are an  
3       important part of the first part of a financial  
4       statement.

5               However, to understand the value of a  
6       company -- intrinsic or the real value of a company, one  
7       must also look to the other two parts of a financial  
8       statement. That's income statements and cash flow  
9       statements. Those actually are what really speak to the  
10      health of a company which is relevant to financial  
11      condition.

12             An income statement explains how good the  
13      company is at making money, how it's controlling its  
14      expenses and whether its assets are making a profit.  
15      Whether a company is making money and how much is a key  
16      issue for financial condition.

17             Cash flow is another part of that standard  
18      financial statement which is again maintained in the  
19      ordinary course of business and part of, you know, GAAP,  
20      General Accounting Principles, they're maintained.  
21      Income is sometimes very similar to cash flow but  
22      sometimes cash flow can look very different in a balance  
23      sheet or in an income statement. The cash flow statement  
24      reports cash actually flowing in and out of the company  
25      and whether the cash provided by a company's operations

1 covers the cash the company is putting into other things.  
2 So a company could have a lot of assets reflected on the  
3 balance sheet or even a lot of receivables reflected on  
4 an income statement, but it could still have a negative  
5 cash flow and that's something important to understanding  
6 financial condition.

7 Again, I want to touch on the notes issues.  
8 Those notes that I talked about for balance sheets, those  
9 would be seen throughout the three parts of a financial  
10 statement and we think those would be important across  
11 the board.

12 Your Honor, the state cites two cases in  
13 support of its motions to compel. The first case is the  
14 City of Tulsa case which the defendants have interpreted  
15 in different ways. But when we looked at the actual text  
16 of that order, that order says -- calls for the  
17 production of financial statements which would contain  
18 the three parts that I've just discussed. What happened  
19 down the line in that case, perhaps the city didn't  
20 pursue those after that order. I can't speak to that.  
21 But I can speak to the words that were chosen by the  
22 court in assessing this issue in that case and I think  
23 that's noteworthy.

24 Also, Your Honor, the state cited the American  
25 Benefit Life Insurance case, which there was a



1       typographical error, Your Honor. We recognize that's a  
2       Western District case, and we apologize for that, not a  
3       Northern District case. But in that case the plaintiff  
4       sought production of balance sheets, profit and loss  
5       statements which are like income statements and other  
6       financial statements, and the motion for protective order  
7       in that case was denied, Your Honor.

8               The state recognizes that there have been cases  
9       in this district where the courts have limited production  
10      to balance sheets. However, Your Honor, I want to submit  
11      two things on that. A couple of these cases, I think,  
12      are distinguishable. For example, in the Toussaint-Hill  
13      case, that was a pro se litigant who had encountered some  
14      entanglements in previous discovery disputes. I was  
15      looking through the orders on that case in preparation  
16      for today. And in that case the Court also veered from  
17      typical discovery practices and did not allow the  
18      discovery of the financial information until after  
19      dispositive motions. I think the Court was kind of  
20      treating that issue with kid gloves because of the nature  
21      of the dispute. The other two cases, Your Honor,  
22      unfortunately there's really no analysis provided from  
23      the court about the factual conditions and the reasoning  
24      for those decision.

25             In this case, Your Honor, we're dealing with

1 extremely large, complex defendants. We're also dealing  
2 with extremely large consequences and damages, and so  
3 something that perhaps didn't call for delving into quite  
4 as deeply in these other cases. In our case a line item  
5 or the way these assets and liabilities are treated could  
6 have implications of millions of dollars. So we think to  
7 really understand the financial condition it's important  
8 to go a level deeper into these financial statements  
9 beyond just the balance sheet.

10 Your Honor, the next thing I'd like to address  
11 is tax returns. The state included in its motions to  
12 compel a request for tax returns. The defendants have  
13 across the board said they would not produce these and  
14 the state believes we're entitled to these because they  
15 contain information that's not available from any other  
16 source. In my preparations for today, Your Honor, I  
17 found a case that very nicely sets forth the standard for  
18 addressing and weighing the production of tax returns. I  
19 have copies for you all, and hand one up. It's a  
20 District of Kansas case. Unfortunately I did not find a  
21 Northern District case that adopts this specifically, but  
22 this is the Cruce v. Schuchmann case. That's  
23 S-h-u-c-h-m-a-n-n. Difficult to pronounce. But it  
24 articulates the standard for production of tax returns  
25 nicely. Your Honor, it explains what while discovery of

1 tax returns -- this is at headnote two. While discovery  
2 of tax returns are not privileged, the law disfavors  
3 their disclosure unless the tax returns are relevant to  
4 the subject matter of the litigation and the information  
5 contained therein is not readily available from other  
6 sources. The party seeking discovery of the tax returns  
7 bears the burden of establishing relevance. The party  
8 resisting disclosure should bear the burden of  
9 establishing alternative sources of the information.

10 Your Honor, in this case the amount of  
11 compensation to inside officers and executives for these  
12 private companies is not available from any other source  
13 except the tax returns. Officers are in a position to  
14 cover deductions and manipulations in the amount of  
15 assets and liabilities portrayed on a balance sheet.  
16 We're not saying that has or hasn't happened with any of  
17 these particular defendants, but the only way to know  
18 whether there's some economic issue impacting financial  
19 condition is to get those tax returns and see whether  
20 that's an issue. Whether executive pay is an issue  
21 that's impacting the bottom line that's being presented  
22 on the balance sheet. Your Honor, those are, I think,  
23 the overall issues and the reasoning why the state is  
24 seeking this information. So I'm now going to turn to  
25 the defendants' specific circumstances in the case today.

1                   I'll start with the Cargill defendants, Your  
2           Honor. Cargill, Inc. and Cargill Turkey Production are  
3           the two separate Cargill defendants. Cargill, Inc. is  
4           one of if not the largest private corporation in the  
5           United States, and the state sought through proper  
6           request for production financial statements. And instead  
7           what it got is what appears to be either an accountant or  
8           attorney-created summary with eight line items which  
9           Cargill represents can provide a full and complete  
10          picture of its financial condition. We dispute that. We  
11          think even if -- even according to the balance sheet only  
12          standard that the defendants advocate, that's an  
13          insufficient production. There's simply no way that  
14          those eight line items are a full pictures. It's the  
15          picture we have. It's the picture Mr. Payne has got and  
16          we provided a report based on that, but we think we're  
17          entitled to more, Your Honor.

18                  For Cargill Turkey, Cargill presented a  
19          similar -- I think it's seven line items in the Cargill  
20          summary which is again not the document maintained in the  
21          ordinary course of business but something created by  
22          counsel and/or accountants. For Cargill Turkey, Your  
23          Honor, which is a subsidiary of Cargill, Inc., we  
24          requested consolidating format financial records. That's  
25          an accountant's term for the records maintained by a

1 subsidiary that report its financial condition to its  
2 parent so that it can create consolidative financial  
3 records. Again, this is standard practice and something  
4 that should be readily available at their fingertips. So  
5 that's why we're asking for Cargill Turkey consolidating  
6 format financials which would be similar to what we've  
7 talked about, but probably a slightly different format.  
8 It may not be as thorough, but again, something that they  
9 should have available. And it's important for Cargill,  
10 Your Honor, that we have -- these are two distinct  
11 defendants in this case. We may end up at the end day  
12 with one and not the other which is why we think it's  
13 important to have the information for both.

14 For the George's defendants, Your Honor,  
15 there's a slightly varied situation from Cargill in that  
16 the George's defendants also had their account -- it's  
17 clear the accountants created revised and redacted  
18 balance sheets that were produced to the state. Your  
19 Honor, what the state received from George's were these  
20 balance statements from their accountants which were  
21 created in December once there was a meet and confer  
22 between the parties. Again, we ask for a request for  
23 production. We should have received the documents  
24 maintained in the ordinary course of business, but we  
25 received these redacted statements which contain on the

1 front page of the disclaimer which is quoted in our  
2 papers which -- I think it stands for what it stands for.  
3 I think the defendants are trying to say that it means  
4 something else or it doesn't mean what it says. But it  
5 says that integral important information to understanding  
6 this document has been removed. So again, we think we're  
7 entitled to that complete information with those integral  
8 accountant's notes to explain the line items.

9 George's did produce income statements to us,  
10 Your Honor, and we appreciate we were able to reach an  
11 understanding on that. However, they contain the same  
12 disclaimer. So for the income statements for George's,  
13 we would request simply the full and complete original  
14 copies, not the ones created specifically for the  
15 discovery purposes.

16 Turning to Peterson and Simmons, Your Honor,  
17 those defendants appear to have produced actual documents  
18 maintained in the ordinary course of business. They each  
19 produced balance sheets, and those balance sheets,  
20 however, do contain redactions. The Simmons' sheet, they  
21 state clearly the integral notes need to be included and  
22 those were not included. For Peterson, however, there  
23 seems to be an ongoing misunderstanding between counsel  
24 about what exactly has been redacted. The Peterson sheet  
25 simply state they have a redacted stamp on them. We

1 can't tell it's been redacted. We haven't received a  
2 redaction log. In conversation with counsel it was  
3 represented that only L&L Cattle business -- if I'm  
4 saying that correctly -- is the only thing redacted from  
5 those sheets. However, Your Honor, there was one sheet  
6 produced in response to the original discovery which had  
7 three columns of information that has been removed, and  
8 so we need a clear understanding of what has been  
9 removed. And frankly, Your Honor, I don't think there's  
10 really grounds for any of the redactions. This is all  
11 protected by the confidentiality order in this case and  
12 there's really no reason to keep that information out  
13 because it's relevant to the financial condition.

14 That's something across the board, Your Honor,  
15 I want to stress. We've had for a long time a very  
16 thorough confidentiality order in this case to provide  
17 adequate production for all the information the state is  
18 seeking.

19 Finally, Your Honor, I want to address some of  
20 the defendants' allegations about the timing of this  
21 motion and alleged ulterior motives. The state did start  
22 this discovery in '06 and '07, but the state determined  
23 that the most prudent and efficient way to go forward was  
24 to seek this information from the defendants when it was  
25 time to deal with the damages issues in the case. Had

1 the state received this earlier, we would have  
2 been dealing with quarterly supplements -- excuse me,  
3 Your Honor -- quarterly supplements every quarter from  
4 these defendants. So -- and also recognizing the  
5 defendants surely would resist in terms of the timing in  
6 the case as defendants often do in these scenarios, let's  
7 deal with it later, let's deal with it later, so let's  
8 deal with it when it's time to deal with damages. So  
9 once that third quarter of '08 wrapped up and we were  
10 preparing for that January deadline, it's time to tee  
11 this up, approach the defendants and said, okay, it's  
12 time to address this. There's no getting around it now.  
13 Let's deal with it. Unfortunately, this was a lot more  
14 difficult than the state ever imagined to get what we  
15 consider very base line basic accounting information.  
16 Information leaks through to the state throughout the  
17 month of December. We received productions up until  
18 January 5th, the actual deadline for the production and  
19 then we were promised documents in mid-January that we  
20 never received. Follow-ups went un-responded to and so  
21 in late January we realized we've got no choice but to  
22 get this in front of the Court.

23 Your Honor, the state is not seeking to somehow  
24 backhandedly supplement Mr. Payne's reports. The state  
25 stands by them and we believe they meet the Rule 26



1 disclosures. However, as we tried to explain in our  
2 responses, the defendants are putting the cart before the  
3 horse. If the Court determines this information is  
4 discoverable, we'll provide it to Mr. Payne and if he  
5 determines that there's something contradictory or  
6 something that conflicts with the information we  
7 previously had on a case-by-case basis, we would approach  
8 the Court about how to deal with that if we can show good  
9 cause for an amendment to address those contradictions.  
10 Hopefully, Your Honor, that -- only be an issue.

11 Also it's worth noting that the reason the  
12 state needs this information is not limited to Mr. Payne.  
13 Defendants, I believe, will be addressing their part of  
14 this case and rebutting him and we're entitled to have  
15 this information to address with whoever they present on  
16 this issue for cross examination.

17 THE COURT: All right. Anything further from  
18 the state?

19 MS. XIDIS: Not at this time. Thank you.

20 THE COURT: Who wants to step up first for the  
21 defendant?

22 MR. TUCKER: I think my number is the lowest,  
23 Your Honor.

24 THE COURT: All right.

25 MR. TUCKER: John Tucker for defendants

1 Cargill. I tried to steal Robert's client but was  
2 unsuccessful. I guess I'm stuck with the one I came  
3 with.

4 THE COURT: All right.

5 MR. TUCKER: Your Honor, as counsel for the  
6 state alluded, documents regarding financial information  
7 were first requested two years ago and again one year  
8 ago. In October of '08, as our paper reflect, the  
9 parties met to narrow the state's discovery request to  
10 something we thought more in the line of what this  
11 district had found to be appropriate in the past.  
12 Cargill on December 4th of '08 submitted a report that  
13 contained not only its net worth but much, much more. As  
14 I would indicate from our response to a motion to compel,  
15 at page three for Cargill, Inc., for five years -- not  
16 one year, but for the previous five years -- we reported  
17 all sales and other revenues, net earnings. We culled  
18 out '05 and '06 earnings that were not reflected by a  
19 special charge. In other words, they weren't reduced by  
20 a special charge. Current assets, net property and other  
21 assets, total assets, current liabilities and net worth  
22 not for one year, as I say, but also five years. Then on  
23 December 23rd of '08 Cargill Turkey Production provided  
24 essentially the same documents. These were filed under  
25 seal and copies are attached under seal to our -- by

1 incorporation by reference to our response.

2 The plaintiff's damage reports were not due  
3 until January 5th of '09. Neither side has been shy in  
4 seeking application for time to extend the filing date  
5 for reports. Plaintiffs did not make any requests for  
6 further time to file Mr. Payne's report. Plaintiff did  
7 not file any motion to seek a more detailed financial  
8 statement prior to the time Mr. Payne's report was filed.  
9 It was only six weeks after Mr. Payne's report was  
10 filed -- and we could make a joke about perhaps that  
11 there was buyer's remorse on Mr. Payne's report. But be  
12 that as it may, there was no application made for an  
13 extension of time to file a report later. There was no  
14 application made to the Court for further financial  
15 information prior to the filing of Mr. Payne's report.  
16 Only six weeks later did someone step up and say that  
17 they wanted this information. The only purpose that they  
18 would have for seeking this information would be some  
19 sort of a hindsight test to bolster the report of Mr.  
20 Payne. Judge Frizzell has previously indicated that this  
21 case, he wants to have the trial date protected. He's  
22 also indicated that he does not believe it's appropriate  
23 to do supplemental reports to bolster your report based  
24 on later actions.

25 The compliance by Cargill and Cargill Turkey

1 Production was total. It was totally within the mandate  
2 of the City of Tulsa case which was Judge McCarthy. It  
3 was totally within and beyond the mandate of the other  
4 cases that are presented this same issue in this  
5 district. For example, Cartoons two -- and I refer to  
6 Cartoons two because Cartoons two reversed Cartoons one  
7 on the issue of whether parity baseball cards did or did  
8 not state a cause of action. But in that case Judge  
9 Joyner found that what was relevant was one year's  
10 balance sheet. In the Heritage Academy case Judge  
11 McCarthy found the balance sheet and net worth for the  
12 current year only. In the Montereau case Judge Joyner  
13 found the balance sheets showing net worth for a single  
14 year. In the City of Tulsa case documents reflecting the  
15 defendant's net worth for five years. That's the only  
16 case that went beyond one year. And I would represent  
17 that the reason that it was five years in that case was  
18 because the City of Tulsa was talking about going back  
19 five years to recover excess water treatment costs  
20 brought about, they believed, by the phosphorous in the  
21 water. As the other Tenth Circuit case -- another Tenth  
22 Circuit case, another Kansas case, which was cited in our  
23 brief, what's at issue is the party's financial  
24 condition, not their financial history. It's not really  
25 relevant to determine anything more than net worth. That

1 is the standard in this district.

2 In summary, Your Honor, I believe that the  
3 plaintiff's motion is not timely, it was not based upon  
4 any showing of need, it was not based any showing -- upon  
5 any showing of good cause, certainly no showing of need  
6 or cause that would cause the Court to consider changing  
7 what has been the established rule in this district for  
8 many years.

9 THE COURT: Mr. Tucker, the discovery cutoff in  
10 this case, I guess, is coming up in April?

11 MR. TUCKER: That's correct.

12 THE COURT: So in that sense -- I mean, as  
13 purely as a discovery matter, isn't the motion timely or  
14 the request timely?

15 MR. TUCKER: If it were as a discovery matter,  
16 but it has absolutely no purposes of the case, Your  
17 Honor, save and except as a basis for Mr. Payne's  
18 opinion. The net worth of the defendant can only be  
19 useful to this plaintiff if it's a part of Mr. Payne's  
20 report. And in fact, that was what the plaintiff told  
21 you today. They have used a phrase putting the cart  
22 before the horse. I'm not sure exactly how that fits,  
23 but what they're saying is we want to get this  
24 information then we'll let Mr. Payne look at it and then  
25 see if he wants to amend his report. They've raised no

1 other purpose for it other than that.

2 THE COURT: If, for example, the decision was  
3 made at trial not to use Mr. Payne, not to use an expert  
4 on this issue, but instead to put damage or net worth  
5 information before the jury and let them make the call,  
6 wouldn't it then be relevant discovery at some point,  
7 some amount of it, for that purpose?

8 MR. TUCKER: The discovery that we provided  
9 would be, yes, because that does provide net worth and  
10 that is the test for determination of punitive damages in  
11 this district.

12 THE COURT: But that's all based on unaudited  
13 financial information, right?

14 MR. TUCKER: No, that's not correct at all.

15 THE COURT: One I'm looking at for Cargill  
16 Turkey says at the bottom: Summarized from unaudited  
17 financial information.

18 MR. TUCKER: The Cargill is and Cargill Turkey  
19 isn't. Cargill, Inc. is audited. In fact, the Cargill,  
20 Inc. -- the fact that the Cargill, Inc. statement is  
21 audited appears as does this information on the Cargill,  
22 Inc. website. That is not even considered to be  
23 confidential. Cargill, Inc. information is as public as  
24 if it were a public company.

25 THE COURT: For Cargill Turkey then, what is

1       there that would rise to the same sort of level audited  
2       information, or is there anything?

3               MR. TUCKER: I don't know that they audit. I  
4       can't answer that question, Your Honor. I can say that  
5       the numbers that are presented for Cargill Turkey  
6       Production are those that are relied upon by Cargill,  
7       Inc. in preparing its audited financial statements.  
8       There's not a separate set of books kept for reporting to  
9       the parent company for them to use -- to their auditors  
10      as opposed to this. I just don't think that the CTP is  
11      independently audited. But the issue would be, of  
12      course, the net worth and that's the number that's been  
13      disclosed.

14             THE COURT: Is the net worth number -- there's  
15      a separate net worth number for Cargill Turkey?

16             MR. TUCKER: Yes, Your Honor.

17             THE COURT: Is that also included in the  
18      Cargill, Inc. numbers? I mean, how much of this  
19      information is then rolled into all of Cargill, Inc.'s?

20             MR. TUCKER: It would all be rolled into  
21      Cargill, Inc. As far as independently breaking out  
22      Cargill Turkey Production, that part was filed under  
23      seal. The other part was not.

24             In our sense, Your Honor, is that they made no  
25      showing of a need for it. What they seek goes beyond

1        what this district has previously required, and its only  
2        purpose would be to bolster an expert report that they  
3        had time to do something else with had they chosen to.

4                THE COURT: All right. Who wants to step up  
5        next?

6                MR. GRAVES: I guess I will, Your Honor. The  
7        next number on the docket sheet. James Graves for  
8        George's and George's, Inc. I won't spend time  
9        reiterating my agreements with the comment issues that  
10       Mr. Tucker has already addressed. The primary concern  
11       that my client has here is that it has been complied with  
12       Rule 26, financial disclosures as interpreted in the  
13       Northern District of Oklahoma. And the main points I  
14       wanted to address were that the state wants additional  
15       information from George's, it seems, without a  
16       demonstration of need which Mr. Tucker just alluded to.  
17       There's been some statements of what they would do with  
18       them, but not a demonstration that that's something  
19       that's needed in order to do the analysis that Mr. Payne  
20       claims he's trying to do which is an ability to pay  
21       analysis. The state also complains specifically about  
22       what George's has produced as lacking certain information  
23       that's needed. And then again my client agrees with the  
24       timeliness issue that Your Honor has just inquired about.

25                As the first issue with regard to whether



1 George's has already complied, the state seems to think  
2 that alleging punitive damages and putting that in the  
3 complaint gives a free pass to look at every financial  
4 statement that George's produces, including what is  
5 essentially would be bank statements if you're talking  
6 about cash flows as well as income tax returns. And we  
7 were handed a Kansas case during the hearing that cites a  
8 lot of New York cases where there's apparently been an  
9 allowance of production of some limited income tax  
10 information. But aside from that not being cited in the  
11 papers and us having to react to it right now, that case  
12 really has nothing to do with the Northern District or  
13 what the standards that have been established in the  
14 Northern District for establishment of the punitive  
15 damages case that the state intends to make.

16 So my client would simply state that that case  
17 is not the law in this case. There has to be some  
18 relevance demonstrated and some need demonstrated to make  
19 the information discoverable. The existence of the  
20 confidentiality order which we discussed on Thursday is  
21 primarily for management of documents that are  
22 discoverable and are being produced in some way that are  
23 sensitive. It doesn't make a front end determination  
24 whether the documents are discoverable in the first  
25 place.

1                   What George's did produce in this case is five  
2                   years of balance sheets and five years of income  
3                   statements which the Court has been provided. Those  
4                   balance sheets show the assets, liabilities and equity of  
5                   the company, including the company's net worth for both  
6                   George's, Inc. and George's Farms, Inc. The income  
7                   statements show income and expenses and debts, and so all  
8                   of those -- all of that information that would be needed  
9                   to get a snapshot of the company's condition including  
10                  over the past five years is right there.

11                  The state has raised the issue of executive  
12                  compensation and potential manipulation of executive  
13                  compensation. There hasn't been any evidence or  
14                  information established along those lines, nor has there  
15                  been a demonstration that that information would be  
16                  needed. But I would think that production of five years  
17                  worth of information would be preventative against that  
18                  type of manipulation if it had been going on over the  
19                  last couple of years since this case came along. You've  
20                  got five years worth of information to look at to see  
21                  whether there's anything that looks strange or unusual or  
22                  out of the ordinary.

23                  As to the state's complaints about the  
24                  particular balance sheets and income statements and the  
25                  notation at the front of it that George's made, the state

1 suggests that George's has made up some excuse for why  
2 that note is there. Actually, George's presented an  
3 affidavit from the accountant that prepared those balance  
4 sheets, the accountant that prepared those income  
5 statements and the accountant that audits George's course  
6 of business financial statements, Mr. Greg Flesher. And  
7 Mr. Flesher is the one who provided that explanation and  
8 Mr. Flesher in fact read the state's papers in the motion  
9 to compel and it was on that that he based his opinion  
10 that they already have what they need in order to do the  
11 analysis they claim they're trying to do. So that's  
12 where that explanation came from. It isn't something  
13 that's been ginned up by George's. It's in fact the  
14 opinion of its accountant who created those documents and  
15 who audits George's ordinary course documents. And the  
16 rationale for not providing ordinary course documents is  
17 that George's produces consolidated financial statements.  
18 Those consolidated financial statements are going to  
19 include subsidiary affiliates that are not part of this  
20 case, that are not in poultry operations even in some  
21 cases. For example, George's has a gas company that are  
22 not involved in any operations on the Illinois River  
23 Watershed. And so, to include those in a production of  
24 financial information to the state would then require  
25 redaction. The state has described what we produced as

1 redacted financial statements. There's not any blackouts  
2 on these financial statements or anything hidden in them.  
3 They were produced with -- you know, clearly, concisely  
4 so that you could see the numbers and see the entries.  
5 If we were to produce consolidated financial statements,  
6 we would be in the position of needing to black out a lot  
7 of things that have nothing to do with this case because  
8 particularly the parent company, George's, Inc., would  
9 have swept up within it financial information for a lot  
10 of other companies that aren't sued in this case and  
11 don't have anything to do with poultry operations or the  
12 Illinois River Watershed.

13 THE COURT: Do the numbers that are in your  
14 reports, compilation report, for property, land and  
15 equipment -- property, plant and equipment -- does that  
16 include these other entities or not?

17 MR. GRAVES: For George's, Inc.?

18 THE COURT: Yes.

19 MR. GRAVES: It would. And it's been  
20 summarized in a line item and that's what Mr. Flesher's  
21 describing is that the ordinary course financial  
22 statements with the typical disclosures would then break  
23 that out further as to what it is and where it is perhaps  
24 and what the allocation is within that entry, and that  
25 the presentation of the total amount is really all you

1        need in order to give a complete financial picture of the  
2        company, that you don't need to know which entity owns  
3        that piece of property under the George's, Inc. umbrella  
4        in order to get an assessment of what the net worth of  
5        George's, Inc. is.

6                THE COURT:    So where this balance sheet, for  
7        example, has current assets, total current assets, those  
8        total current assets include these other subsidiaries  
9        that are not parties to this lawsuit -- (Interrupted)

10               MR. GRAVES:   They do -- they do, Your Honor.  
11        They just make it -- this makes it legible and  
12        intelligible to read and also protects details about  
13        individual corporations that haven't been sued.   I don't  
14        know any other way to put it than that.   The affidavit,  
15        Mr. Flesher describes that and what he's saying is -- or  
16        what he seems to be saying to me, I'm not -- I have an  
17        accounting degree, but never used it.   What he's saying  
18        to me is that he prepared these documents.   He used the  
19        real numbers.   These aren't ginned up numbers.   He used  
20        the real numbers off of the real financial statements,  
21        but he produced something that protected the details of  
22        underlying information, but to still give the state what  
23        they needed based on what they've described in their  
24        papers as needing.   And in fact, it complies with what  
25        the law is in this district as far as proof of punitive

1 damage and that is net worth. And so, George's is in the  
2 position -- we feel like George's has produced more than  
3 that standard in providing the income statements as well.

4 THE COURT: What about Mr. Xidis's statements  
5 that there are other details that might affect that, that  
6 the balance sheet may be fine, but cash flow, et cetera,  
7 is really needed to know basically the picture of the  
8 financial health of George's and the other defendants?

9 MR. GRAVES: Well, I would cite again to, first  
10 of all, the affidavit from Mr. Flesher who says it's not  
11 needed and to the case law in this district, which I'm  
12 not aware of a case that the state has come up with where  
13 cash flow statements were required to be produced. And  
14 so, we're again back to net worth and George's produced  
15 five years worth of net worth and then on top of that  
16 produced five years worth of income and expense. The  
17 state says they need it, but they haven't said why they  
18 need it other than just they would like to see how much  
19 cash is going in and out of the company. They've got a  
20 complete picture of the net worth of the company and a  
21 complete picture of how much money the company has made  
22 over the last five years, for both companies, George's,  
23 Inc. and George's Farms.

24 My only other -- I just wanted to make it clear  
25 that those are the real numbers, that those are the

1 numbers that they said they needed and those are the  
2 numbers that George's provided. And then we would also  
3 agree with the timeliness issue that Mr. Tucker  
4 discussed. And again, it may be that the state would  
5 choose to or elect to present some net worth information  
6 as the Court has suggested. In that case, they've  
7 already got it, even before the January 5th deadline, but  
8 certainly before the April 15th deadline. The additional  
9 information that they're seeking now we would state is  
10 untimely because it is beyond the time period when the  
11 person who could provide that analysis for them is  
12 allowed to do that type of analysis under the Court's  
13 deadlines. They would be right back here, I assure you.  
14 It's not a cart before the horse. They would be right  
15 back here asking for additional time to produce a  
16 supplemental report and the defendants would need to  
17 respond to it and then we're running into deadline issues  
18 which is why the Court set the scheduling order the way  
19 it did.

20 THE COURT: All right.

21 MR. GRAVES: Thank you.

22 THE COURT: Simmons, I guess, is next.

23 MR. HIXON: Your Honor, Phil Hixon for Peterson  
24 Farms. Just to shorten this, I agree with Mr. Tucker and  
25 Mr. Graves with regard to these timing issues and some of

1       those generalized arguments. I would like to address  
2       some Peterson specific issues, however.

3               Ms. Xidis's reference to documents being  
4       promised in mid-January and not being produced, I  
5       believe, was a reference to Peterson Farms. That  
6       situation arises from the asset sale between Peterson  
7       Farms and Simmons which occurred in July-August of 2008.  
8       Peterson operates on a fiscal year calendar which runs  
9       from October to the following September. What had been  
10      promised in mid-January was the fiscal year 2008 balance  
11      sheet which would run from October 2007 to the September  
12      2008 date. At the time that was promised, that balance  
13      sheet had not been prepared. It was believed that that  
14      would be available in mid-January. It was not. And in  
15      fact at the present time, that balance sheet is still not  
16      available. That said, we promised to produce that  
17      balance sheet and we will produce that balance sheet once  
18      it's available.

19             THE COURT: When does that look like it's going  
20      to happen?

21             MR. HIXON: I don't have a word as to when.  
22      It's in process. It was expected that it would be  
23      prepared by mid-January. It hasn't been. Peterson -- at  
24      the operation of the asset sale, Peterson was a company  
25      of 1100 employees approximately. In its current state,



1 it's a company of about 50 employees. So it's -- there  
2 are other priorities, operational priorities, for  
3 Peterson. I believe that that's the issue.

4 That being said, the last conversation that Ms.  
5 Xidis had with Peterson on these issues was in  
6 mid-December. The next conversation that we had was the  
7 motion to compel that was filed in February. There's no  
8 meet and confer on these issues. State didn't follow up  
9 to see what the status of this balance sheet was or these  
10 other issues. The state has been told numerous times on  
11 these redaction issues that what's been redacted was  
12 information for L&L Farms which is a cattle operation. I  
13 note that the state didn't produce to you what had been  
14 produced to the state with regard to Peterson Farms. Had  
15 those statements been produced to you, it's clear that  
16 what had been redacted was a column on the right-hand  
17 side. I mean, its assets, Peterson Farms, a blank space,  
18 liability, Peterson Farms, a blank space, net worth, and  
19 so on. The information that was redacted is  
20 non-responsive. It's operations outside of the scope of  
21 this lawsuit and the conversations that I had with Ms.  
22 Xidis and Ms. Ward in her office on the issues, they  
23 indicated L&L Farms' information was not information that  
24 they wanted. And yet, it keeps appearing in these  
25 pleadings.

1 THE COURT: The net worth or whatever numbers  
2 you gave for net worth for Peterson, does that include  
3 L&L Farms in it somewhere or is that a totally separate  
4 entity?

5 MR. HIXON: I can't answer that question this  
6 morning. I believe it's -- I don't want to say one or  
7 the other because I'm not sure that it's included or if  
8 it's not included. For purpose of those balance sheets,  
9 it is broken out and what we represent what has been  
10 presented is a net worth for Peterson Farms knowing that  
11 the basis would be used for this punitive damage --  
12 (Interrupted)

13 THE COURT: What's the relationship between  
14 Peterson and L&L Cattle? Is that a subsidiary or is  
15 that -- (Interrupted)

16 MR. HIXON: Peterson Farms has a number of  
17 family owned businesses and it's an affiliated company is  
18 my understanding. I mean, it's a cattle operation. It  
19 was not involved in the broiler production side of the  
20 business or the chicken breeding, that portion.

21 THE COURT: I guess the question would be  
22 whether any of the assets of L&L Farms would be at issue  
23 if the punitive damage awards were entered after trial  
24 against Peterson.

25 MR. HIXON: Well, and that raises a new issue

1 and where I'm headed. Because of this asset sale,  
2 Peterson Farms as it exists right now and as it will  
3 exist at the time of trial is a very different company  
4 than it was in 2004 which is the beginning period for  
5 which we produced balance sheets. On this fiscal year  
6 balance sheet which the 2008 balance sheet which hasn't  
7 been produced yet which we will produce when it's  
8 available, it's going to have August-September  
9 operations. It will show what Peterson Farms looks like  
10 as of September 2008. With regard to the cash flow,  
11 income statement, tax returns, that's not going to be  
12 probative of the issues that Ms. Xidis has referred to  
13 here earlier today with regard to these other defendants.  
14 It's going to have -- there will be two months of  
15 operations with Peterson Farms in its new form. So, it's  
16 not probative. It can't be probative. What might be  
17 probative -- well, it's not.

18 THE COURT: Is this balance sheet going to  
19 reflect the price that was paid for Peterson?

20 MR. HIXON: I haven't seen the balance sheet.  
21 It hasn't been prepared. I can't represent what it will  
22 and will not portray. The balance sheets that have been  
23 produced today have been audited financial statements,  
24 they're audited balance sheets. I assume that they'll be  
25 -- the 2008 statement will be produced or compiled in a

1 similar manner that the 2004 through 2007 balance sheets  
2 have.

3 The comment on the City of Tulsa order. Ms.  
4 Xidis focuses in on this financial statements language  
5 that Judge McCarthy used in that order. Putting that in  
6 context, that sentence reads: Financial statements  
7 showing net worth. That net worth is by definition  
8 assets minus liabilities, that's your net worth. That's  
9 a balance sheet. That's what was ordered to be produced,  
10 that's what was produced. Judge McCarthy further states  
11 that the plaintiffs in that case had not sustained their  
12 burden to show that any additional information was  
13 relative or probative, that they had not provided any  
14 sound reason for producing or compelling production of  
15 information beyond these balance sheets, and the same is  
16 true in this case. The plaintiffs are wanting this  
17 information for their punitive damage claim, yet that's  
18 the same reason that was present in the City of Tulsa  
19 case, the Hightower case, this Montereau case, and the  
20 other cases slipped my mind, the Cartoons case. All of  
21 those plaintiffs wanted this wide array of financial  
22 information for punitive damages and in each of those  
23 cases they were limited to one balance sheet, City of  
24 Tulsa case, five balance sheets, which is what Peterson  
25 has promised to produce here or has already produced.

1 There's not been any sound reason. Mr. Payne's report  
2 which was provided to you, he's formed his opinion on  
3 Peterson's purported ability to pay a punitive damage  
4 award. Of note, Mr. Payne only used the last balance  
5 sheet that was provided to the state which is the 2007  
6 balance sheet. He didn't qualify that. He didn't say,  
7 you know, in order to make an opinion on this ability to  
8 pay, I need a tax return or I need a cash flow or I need  
9 an income statement. He just -- he made his opinion,  
10 there it is. It's not qualified. Moreover, he didn't  
11 raise this executive pay issue that Ms. Xidis raised this  
12 morning. These issues -- it's all a straw man argument.

13 I want to address this timing issue. In  
14 response to the motion for protective order that Peterson  
15 Farms filed, the state raises this contention that  
16 Peterson Farms was more strongly -- contests this  
17 discovery had they raised it earlier. They've had over  
18 two years to raise the issue, waited until after the  
19 passage of their expert report deadline to raise it. At  
20 no point in that process did Peterson Farms ever argue  
21 that the production of financial statements was  
22 premature. What Peterson Farms stated in 2006 in  
23 response to the state's request for productions was it  
24 objected on the basis of relevancy, the proprietary and  
25 confidential nature of the information sought. Subject

1 to those objections, Peterson agreed to produce its  
2 current financial statements limited to a balance sheet.  
3 It produced that, it supplemented that since and it's  
4 maintained those same objections throughout. At no time  
5 was prematurity a position for which Peterson argued  
6 against production. Peterson recognizes it has an  
7 obligation to produce these balance sheets under the  
8 authority of the cases in this district. It has done so.

9 Unless you have some questions, Your Honor, I  
10 believe I'm done.

11 THE COURT: Mr. Hixon, I think you indicated,  
12 frankly, they're running together on me a little bit. I  
13 may have it here. You indicated that you weren't -- you  
14 didn't think the Court had been provided with the balance  
15 sheet.

16 MR. HIXON: I believe that's correct.

17 THE COURT: I would like to get that. It can  
18 be just submitted in camera -- (Interrupted)

19 MS. XIDIS: Your Honor, I have a copy here  
20 today. I verified -- (Interrupted)

21 MR. HIXON: I also have a copy.

22 THE COURT: If you folks between you have an  
23 extra, then I'll take a look at it.

24 MS. XIDIS: That's the original that was  
25 produced in response to discovery.

1                   MR. HIXON: Those appear to be true and correct  
2                   copies of what was produced to the state.

3                   MS. XIDIS: The one sheet standing letter, Your  
4                   Honor, was produced in response to the request for  
5                   production and the pages that are stapled are what was  
6                   produced in December by Peterson.

7                   THE COURT: Okay.

8                   MR. HIXON: And just to explain those, that  
9                   initial production, the sheet that's standing alone, was  
10                  compiled by then CFO Peterson, and the other documents  
11                  were compiled or were of the audited -- portions of the  
12                  audited financial statements prepared by Peterson's  
13                  accountant. We expect the 2008 production or 2008  
14                  balance sheet to be in the format the audited financials.

15                  THE COURT: All right. We'll let the record  
16                  reflect that I've accepted the production from Peterson  
17                  Farms of their financial information that was given to  
18                  the state so I can take a little closer look at that.

19                  All right. That leaves Simmons, I guess. Ms.  
20                  Bronson, is that right?

21                  MS. BRONSON: Yes, Your Honor. Vicki Bronson  
22                  on behalf of Simmons Foods. And I won't bore you with  
23                  repeating all the argument that have been already made  
24                  and I'll stick -- (Interrupted)

25                  THE COURT: I assume you agree with Mr. Tucker

1 and everybody else on the defense side who has come  
2 before you?

3 MS. BRONSON: Yes, Your Honor. With regard to  
4 Simmons, we believe that we've fully complied with what's  
5 required by the law in this district. We provided  
6 balance sheets from 2002 through 2008, and those balance  
7 sheets reflect a net worth which is what the standard is.

8 I would like to point out this Cruce case that  
9 was brought in this morning, nowhere in that case did it  
10 say anything about executive compensation. The reason  
11 that tax returns were ordered in that case is because the  
12 defendant didn't provide anything else. They didn't  
13 provide balance sheets or any other financial statements.  
14 No other district court in this district has ordered a  
15 production of tax returns or anything other than balance  
16 sheets which is what we provided for eight years.

17 THE COURT: The reports that you -- balance  
18 sheets that you provided, are they from audited  
19 financials?

20 MS. BRONSON: The ones where we had audited  
21 financial statements, those were provided. I didn't  
22 bring a copy of those with me today, but if we had  
23 audited financial state -- or audited balance sheets for  
24 those particular years, that's what we provided.

25 THE COURT: Is the Simmons production in the



1 record?

2 MS. BRONSON: Yes.

3 THE COURT: Submitted to the Court?

4 MS. BRONSON: Yes.

5 THE COURT: Okay. Anything else?

6 MS. BRONSON: That's it.

7 THE COURT: Ms. Xidis, do you want to respond  
8 to anything that was said here?

9 MR. XIDIS: Yes, Your Honor. A couple things,  
10 Your Honor. Overall, the burden here is for the state to  
11 demonstrate that the information it's seeking is  
12 relevant. Your Honor, I think we've done that today in  
13 explaining why the different bits -- different three  
14 pieces of a financial statement relevant to financial  
15 condition. What the state is trying to avoid here, Your  
16 Honor, is a situation where all we have is a balance  
17 sheet, especially on a redacted revised balance sheet,  
18 but only have a balance sheet and we get to trial and  
19 these defendants say, oh, but wait, wait, income's been  
20 bad this year. You know, our cash flow is terrible, our  
21 financial condition is poor, we're not in good shape.  
22 And, Your Honor, there's definitely the ability for that  
23 to happen here unless we get the entire financial  
24 statement. The defendants refer to all their reasonings  
25 and say the state hasn't demonstrated its need for it and

1        what not. Well, they have a burden to show good cause  
2        why they have a protective order on this information. I  
3        think we've met our burden to say it's relevant. They  
4        have not demonstrated today why a protective order is  
5        necessary. They have tried to explain -- proprietary,  
6        this is confidential. I think that's clearly covered by  
7        the confidentiality order in this case. That's really a  
8        non-issue for us here today.

9                Your Honor, I think another important thing the  
10       Court picked up on is this information is not limited to  
11       Mr. Payne and his reports. Frankly, I don't expect -- I  
12       don't know that the defendants will have an expert to  
13       address this issue. I think we're going to see corporate  
14       representative addressing this issue in response to Mr.  
15       Payne, and they've got access to every detail of the  
16       defendants' financial information. The state should at  
17       least be entitled to the most base line basic Generally  
18       Accepted Accounting Principle three part financial  
19       statement. We're not asking for the moon and the stars  
20       here. This is Accounting 101 that the state is seeking  
21       to avoid that situation where we get up to trial and --  
22       oh, but we -- actually, we can't pay because obviously  
23       we're in a volatile economy, things could change, we've  
24       seen that with a lot of companies. The numbers we see --  
25       what you see doesn't always tell the whole story. I

1 think that's really important as we get ready for this  
2 trial in September '09, Your Honor.

3 And perhaps the day is not the day, but I think  
4 supplementation is another issue we need to address. We  
5 were dealing with this in October-November-December of  
6 '08. We're going to be going to trial in September '09,  
7 so more quarters are going to pass before we get there,  
8 and the defendants are going to have a duty to supplement  
9 this information so that we have the relevant, current  
10 financial condition when we get to trial.

11 I would like to just touch on a couple of the  
12 specific issues raised in regards to the productions.  
13 Cargill represented to Your Honor in their presentation  
14 that compliance was total, and I think especially in the  
15 case of the Cargill defendants, Your Honor, that is  
16 really a misstatement. What they have produced is not  
17 even a balance sheet. It's eight line items. The other  
18 balance sheets that have been presented to the Court have  
19 about 30 different line items in them. So I think that  
20 at a very base line level, Cargill is by far the least in  
21 compliance with any standard we've talked about today.

22 The Court also touched on the issue of the  
23 audited statements and unaudited statements for Cargill  
24 Turkey, Inc. And just to try to clarify something I  
25 mentioned earlier which was the consolidating financials,

1       that's the same thing I think the Court was inquiring  
2       about. Those consolidating financials would be the  
3       unaudited financials of Cargill Turkey that are then  
4       reported to Cargill, Inc., and so that is something that  
5       already preexists, again, basic Accounting 101 that the  
6       state thinks it's entitled to, to address that particular  
7       Cargill Turkey defendant.

8               Next, Your Honor, I want to turn to the  
9       George's production. In trying to explain these reports  
10      we received, I think there's really important information  
11      in these accountant's disclaimers on the front of each  
12      one of these sheets. As counsel explained, these were  
13      created by the accountant. The accountant went out of  
14      his way to explain what is missing from these  
15      consolidated financials and I think that's really  
16      important to point out. If we look at the second  
17      paragraph of these disclaimers, it says: A compilation  
18      limited in presenting the form of a balance sheet  
19      information. That is -- I'm sorry. Mixing up my words  
20      here. A compilation is limited to presenting in the form  
21      of a balance sheet information that is the representation  
22      of management. It goes on to say that management has  
23      elected to omit substantially all of the disclosures  
24      required by Generally Accepted Accounting Principles. If  
25      the amended disclosures were included in the balance

1 sheet, they might influence these conclusions about the  
2 company's financial position.

3 Your Honor, this is very important language.  
4 This accountant is essentially saying I've taken out  
5 information that pertains to the company's financial  
6 condition. I don't know how we can talk around that or  
7 get around that. It's relevant and I don't think  
8 George's has explained good cause for why it should not  
9 be produced or why it should be protected.

10 Moving on to Peterson, Your Honor, and what has  
11 been redacted -- (Interrupted)

12 THE COURT: The accountant -- as I understand  
13 the compilation, the accountant, it's all right for the  
14 accountant to produce that documentation in that form as  
15 long as he's certainly not aware that there's any  
16 material omission that was done to mislead anyone; is  
17 that fair to say?

18 MR. XIDIS: Well, the accountant prepared this  
19 at the direction of management is what he's telling us.  
20 But what he is required -- (Interrupted)

21 THE COURT: It would normally be a document  
22 that would be a report within a company, I think; isn't  
23 that right?

24 MR. XIDIS: Your Honor, this would be a  
25 document -- (Interrupted)

1                   THE COURT: A compilation might be done in that  
2                   way by the accountant for internal use until final  
3                   documentation or something is done?

4                   MR. XIDIS: Well, I don't know. I can't answer  
5                   that for George's. But what I can say is that we think  
6                   that we served a request for production and in response  
7                   for that request for production we are entitled to  
8                   documents maintained in the ordinary course of business.  
9                   So we're entitled to that complete audited financial  
10                  report with its three parts. Instead we got this  
11                  specially created by management, consolidated, redacted  
12                  version of a financial statement that's fraught with  
13                  disclaimers. The accountant has a duty under his  
14                  professional standards to put this disclaimer and say I  
15                  haven't followed my general principles and rules, so  
16                  reader beware. There's information missing. That's what  
17                  happened here and with the other balance sheets where we  
18                  don't have the notes. So I think that's important to --  
19                  the accounting profession has this standard for reason  
20                  and the disclaimer's there for a reason, is because  
21                  relevant information is -- needs to be in those notes and  
22                  it needs to be seen by the reviewer.

23                  On Peterson, Your Honor, I've handed you my  
24                  only copy of those documents, but it's confusing what has  
25                  been redacted and what hasn't. When you compare the

1 initial one sheet production that was produced in  
2 response to discovery and then the ones that were  
3 produced in December, there are three columns missing  
4 from the December production, none of which on their face  
5 appear to be the L&L Cattle business. And so, again,  
6 Your Honor, we're asking for simply the un-redacted  
7 copies maintained in the ordinary course of business.  
8 Counsel did not explain good cause for protecting these  
9 other columns other than, oh, you know, it's private.  
10 Well, we have a confidentiality order that covers that,  
11 Your Honor.

12 THE COURT: For example, Peterson LP Gas  
13 Company, that was part of the assets purchased, wasn't  
14 it?

15 MR. McDANIEL: That's correct.

16 MR. BULLOCK: That's what was described the  
17 other day.

18 THE COURT: Right. I don't know about the  
19 Decatur Discount Center, but I think that was also.

20 MR. HIXON: That's no part of Peterson, Your  
21 Honor.

22 THE COURT: That's no part of Peterson? So  
23 when the Peterson LP Gas Company doesn't appear on the  
24 later -- well, actually, it's not even on the 2004.

25 MR. XIDIS: Right.

1 THE COURT: Okay. But I assume those numbers  
2 are rolled into the financial statement numbers.

3 MR. HIXON: Right, Your Honor. As I stated  
4 when I was at the podium, that one sheet was prepared by  
5 Peterson's CFO in response to that initial request for  
6 production. It's not going to exist for any subsequent  
7 years. It was produced for purpose of discovery.

8 THE COURT: So when it was created, it was not  
9 a document kept in the ordinary course of business, it  
10 was especially created to provide the information that --  
11 (Interrupted)

12 MR. HIXON: It was not an audited financial  
13 statement. Whether it was kept in the ordinary course of  
14 business I can't comment. But it's not an audited  
15 financial statement like the other financial statements  
16 are. The financial -- the audited financial statements,  
17 it's -- you know, the column is for Peterson Farms.  
18 That's the defendant in this case, that it shows net  
19 worth of that defendant. What was redacted, if you look  
20 at pages 93419, for instance, this empty space over here  
21 on the right was the L&L Farms information. That's  
22 what's been redacted from this audited financial  
23 statement.

24 THE COURT: Okay.

25 MR. XIDIS: Your Honor, if it's an audited



1 financial statement there would be notes that correspond  
2 to it. And so again, we are requesting the complete  
3 financial statement, all three parts, with the notes.  
4 It's very difficult to argue for something that we don't  
5 know exactly what it is because it's been redacted, but I  
6 think it all just supports the point to understand the  
7 full financial condition you've got to see these notes  
8 that are integral to the accounting profession. So, Your  
9 Honor, I think that's all.

10 THE COURT: I think it was in one of your -- it  
11 wasn't your letter, it was a letter written in response  
12 to, for example, Cargill's discovery responses and we had  
13 these seven bullet points of things that the state  
14 wanted. I'm not hearing mention of a number of these  
15 things here today. Are those still the table or have you  
16 narrowed it down to --?

17 MR. XIDIS: The state has made a concerted  
18 effort to narrow this down. And so, the things that the  
19 state is seeking today in this motion are those complete  
20 financial statements. So, balance sheets, income  
21 statement, cash flow statement with complete set of  
22 notes, two years of tax returns and for Cargill Turkey,  
23 the consolidating format financials which would -- we  
24 also called it, I think, the unaudited financials today  
25 that are reported to the parent company Cargill, Inc.

1                   THE COURT: All this other stuff of working  
2 trial balance, appraisal valuations, copies of business  
3 plans, et cetera -- (Interrupted)

4                   MR. XIDIS: In our attempts to meet and confer  
5 and reach an agreement on this we've really tried to  
6 narrow our request to what we can consider, you know, the  
7 basics of describing a company's financial condition.  
8 And to avoid that situation I described earlier where we  
9 get to trial and these defendants say, oh, but wait, that  
10 balance sheet statement, that doesn't really explain our  
11 financial health. We're actually really having problems  
12 and we can't withstand a judgment. We've got -- it  
13 simply wouldn't be fair for the defendants to have that  
14 information and be able to use it and for it not to be  
15 produced to the state. If it's not produced in  
16 discovery, Your Honor, we would submit that they  
17 shouldn't be able to use it in that manner in the trial  
18 of this case.

19                  THE COURT: All right. Anybody on the defense  
20 side? And generally, what about that? If there's  
21 something that you don't produce to the state, are you  
22 going to be allowed to try and use it at trial? Is there  
23 going to be any question at trial or are we going to have  
24 defendants taking a different view of, say, Mr. Payne has  
25 assessed in his valuation? Obviously, you may take a

1 different view, but is it going to be such a radically  
2 different view based on different documentation than what  
3 we're dealing with here today?

4 MR. GRAVES: I can only speak for George's, but  
5 we certainly aren't going to agree with Mr. Payne's  
6 analysis or his conclusions about what George's could pay  
7 or its ability to pay punitive damages or whatever it is  
8 he's saying that we could pay. And has been alluded to,  
9 he didn't even use complete information that he had been  
10 provided at the time, he used parts of it that seemed to  
11 suit him. So we're certainly not going to agree with  
12 that analysis. But I can also say that from George's  
13 standpoint we're not going to be presenting cash flow  
14 statements or income tax returns at trial. So, that's  
15 not something that the state would need to concern itself  
16 with because it's not going to happen.

17 THE COURT: In terms of net worth, is there  
18 going to be a fight at trial from George's over whatever  
19 Mr. Payne said was the net worth?

20 MR. GRAVES: I can't speak to whether the net  
21 worth is going to change during 2009. What I can say is  
22 that -- if we have a duty to supplement or update that  
23 information based on economic circumstances and the  
24 company's performance during 2009 we would do that and  
25 we're obligated to do. I can't say that the conditions

1 are going to be better or worse. We're all dealing with  
2 the economy we're dealing with right now and that's a  
3 possibility that things could be worse or things could be  
4 better than they are in these balance sheets that have  
5 been presented at this point in time. As Ms. Xidis  
6 conceded, a balance sheet is just a snapshot of a  
7 company's net worth at a point in time, whatever point in  
8 time you pick, to produce that balance sheet. And so,  
9 whatever date the balance sheet is that we produced, I  
10 think it was in December of '08, that's what the net  
11 worth was in December of '08. I don't know what it would  
12 be today. I doubt it's substantially changed but at this  
13 point. But if we had to supplement, we would if we had  
14 intended present information along those lines at trial.

15 I just wanted to briefly, very briefly, address  
16 this notation again by the accountant, and Your Honor  
17 touched on it, and that is the accountant -- the state  
18 continues to maintain that there's information missing  
19 and that the accountant put these big warning signs at  
20 the front of the financial statements in order to warn  
21 people off. That's not the purpose of those notations  
22 and he's explained that in his affidavit. The reason  
23 those notations are there are to let people that there  
24 are things that would normally be in a consolidated  
25 balance sheet or income statement that aren't there in

1       this case because of the reasons that they were being  
2       prepared in this case, and that was partly management's  
3       desire and counsel's desire to not produce a lot of  
4       financial information and details about companies that  
5       aren't in this case and/or that aren't involved in  
6       poultry operations. Those accountants would not even  
7       sign or present or prepare an accounting statement if  
8       someone was telling them you've got to admit everything  
9       that's important or everything that's material. And if  
10      there were material omissions, it would be noted as a  
11      material omission. Mr. Flesher has explained in his  
12      affidavit very clearly what types of information was  
13      omitted. And so, by virtue of the notation, he's telling  
14      people that -- he's telling the person that's going to be  
15      reading it for the purposes it was being produced in this  
16      case, which is an adverse party in litigation, that some  
17      things that might ordinarily be in a financial statement  
18      that's presented to internal management for their  
19      purposes might not be here and for what your purposes are  
20      in this case and he knew what those purposes were because  
21      he had read the papers in this case.

22               But I also just wanted to point out GAAP is not  
23      the law that I'm aware of in Arkansas or Oklahoma.  
24      Certainly it's something that the accountant -- the  
25      accounting profession has adopted. And part of GAAP is

1 -- Generally Accepted Accounting Principles. Part of  
2 GAAP is to let users know what's in there and what's not  
3 in there and that's what Mr. Flesher was doing. What is  
4 the law in this district is presenting a real net worth  
5 number for punitive damages purposes and that's what  
6 George's has done. Thank you.

7 THE COURT: All right. Mr. Tucker?

8 MR. TUCKER: Your Honor, if I may, let there be  
9 no mistake. We do not accept Mr. Payne's  
10 characterization of the purpose of Mr. Payne's testimony  
11 as being ability to pay. That is not the standard by  
12 which Cargill will expect to be judged when the Court  
13 gives instructions in this case if punitive damages are  
14 going to the jury. That may be Mr. Payne's professional  
15 opinion, that may be the way he's testified and he's a  
16 very successful testifier, we've all heard him and he has  
17 lots of on-the-edge ideas about how to present his  
18 theories and this is just another one of them. I'd be  
19 very surprised if Mr. Payne survives a Daubert challenge,  
20 frankly, with his standard.

21 Be that as it may, we recognize our  
22 responsibility to supplement our information with regard  
23 to net worth and I would assume that we would have six  
24 months of 2009 behind our belts and completed before this  
25 trial starts in September and I would expect that that

1 would be information to which the plaintiff, the state,  
2 would be entitled. Net worth is the standard in this  
3 district. We have gone beyond simply providing a number,  
4 a net worth. We've provided, let the Court note, in a  
5 pleading form in response to a discovery request. We  
6 have not given someone else's letter or someone else's  
7 affidavit. That is -- Cargill itself has presented this  
8 number. This is its net worth over these periods of time  
9 and that complies with what's required in this district.  
10 Thank you, sir.

11 THE COURT: All right.

12 MR. HIXON: Your Honor, make an additional  
13 point on Mr. Payne's opinion on net worth. First, I  
14 would refer you to the Peterson audited financial  
15 statements. If you look at what's Bates numbered  
16 PFIRWP-093426, on that page is the total owner's equity  
17 which is Peterson Farm's net worth. I'll let you look at  
18 that number. If you refer to page eight of Mr. Payne's  
19 report for Peterson Farms, he has a net worth figure here  
20 for the same time period, the September 29th, 2007 time  
21 period.

22 THE COURT: All right.

23 MR. HIXON: That number, as you can see, is  
24 very different than the number in Peterson Farms'  
25 financial statements in the audited balance sheet. So to

1 the extent that, yes, Peterson will contest the net worth  
2 figure that Mr. Payne has presented in his report, that  
3 will not entail trotting out financial -- additional  
4 financial statements, income statements, cash flow or tax  
5 returns.

6 Additional comment. As I stated before, Mr.  
7 Payne has only used this September 29th, 2007  
8 information. He was produced information for 2004, 2005  
9 and 2006. If one were to compare the changes in those  
10 account balances during those periods, he could obtain  
11 much of the information that the state is requesting --  
12 now. It's inherent in the changes in the -- I mean,  
13 that's just basic financial information. So, yes,  
14 Peterson will rely on what is produced to the state and  
15 if required to supplement, it will supplement as ordered.  
16 But the information that the state has -- or the state  
17 has currently, it satisfies the obligation --  
18 (Interrupted)

19 THE COURT: -- long as there's not other  
20 information currently available that one would turn  
21 around and say, ah hah, got this information that shows  
22 that your numbers are all wrong and we didn't give it to  
23 you at the time. Obviously, we're not going to -- that's  
24 not -- (Interrupted)

25 MR. HIXON: With regard to Peterson, I mean,



1       there's going to be changes between this September --

2       (Interrupted)

3               THE COURT: I understand that -- (Interrupted)

4               MR. HIXON: -- 2008 and we promise to produce  
5       that when it's available. Thank you.

6               THE COURT: Anyone else? All right. I will  
7       take these motions under advisement and I'll look in a  
8       little more detail. I've tried looking at some of the  
9       cases around the country in terms of what has generally  
10      been ordered, and frankly, there's not a lot of detail  
11      out there. But I have to say that at least certainly  
12      with respect to -- the reason I asked about the seven  
13      points, I don't know of anybody that's ordered all that  
14      produced. So I want to look more at the cases that  
15      you've cited here in the Northern District and elsewhere  
16      as well as the Cruce case and then we'll get an order out  
17      as expeditiously as we can. All right. Thank you.

18              (END OF PROCEEDINGS)

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C E R T I F I C A T E

STATE OF OKLAHOMA )  
 ) SS.  
COUNTY OF TULSA )

I, Greg Eustice, Certified Shorthand Reporter  
in and for the State of Oklahoma, do hereby certify that  
on March 2, 2009 the above Proceedings were held before  
the Honorable Paul J. Cleary, Magistrate Judge in the  
United States District Court for the Northern District of  
Oklahoma, and that the same was reduced to writing by me  
in stenograph, and thereafter transcribed by myself, and  
is fully and accurately set forth in the preceding 57  
pages.

I do further certify that I am not related to  
nor attorney for any of the said parties, nor otherwise  
interested in said action.

WITNESS my hand this 10th day of March, 2008.

S-Greg Eustice\_\_\_\_\_  
GREG EUSTICE  
Certified Shorthand Reporter